

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

BOBBY LYNN DAILEY	§	
v.	§	CIVIL ACTION NO. 9:13cv44
POLUNSKY UNIT WARDEN, ET AL.	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Bobby Dailey, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On April 23, 2013, Dailey was ordered to pay an initial partial filing fee of \$1.66, pursuant to 28 U.S.C. §1915(b). He was also ordered to amend his complaint to set out a short and plain statement of his claim. Dailey has amended his complaint, but did not pay the initial partial filing fee.

On May 29, 2013, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed without prejudice for failure to prosecute or to obey an order of the Court, based on Dailey's failure to pay the initial partial filing fee. Dailey filed objections to the Report on June 28, 2013, which objections were signed on June 4, 2013.

In his objections, Dailey says that he had surgery in Galveston on April 24, and stayed there for a week. In a "declaration of inability to pay costs," Dailey states that he is unable to pay the court costs because he currently has \$16.86 on his account and receives approximately \$20.00 per month from friends and relatives, and his "monthly expenses" are \$18.00 to \$30.00. However, this

declaration makes plain that Dailey can readily afford the initial partial filing fee of \$1.66. Over a month has passed since Dailey signed his objections on June 4, but Dailey has still not complied with the order to pay the initial partial filing fee. His objections to the Magistrate Judge's Report are without merit.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the Report of the Magistrate Judge and the Plaintiff's objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and the Report of the Magistrate Judge (docket no. 8) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice for failure to prosecute or to obey an order of the Court. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So **ORDERED** and **SIGNED** this 10 day of **July, 2013**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge